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EXAMINER

TON, ANABEL

ART UNIT

PAPER NUMBER

2875

DATE MAILED: 12/04/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/927,484

Applicant(s)

HALASZ, CHRISTOPHER LEE

Examiner

Anabel M Ton

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 September 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 7-11, 15-19 and 26-30 is/are allowed.
- 6) ☒ Claim(s) 1-6, 20-22, 24 and 25 is/are rejected.
- 7) ☒ Claim(s) 23 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-5 are rejected under 35 U.S.C. 102(b) as being anticipated by Yu (5,816,684).
3. Yu discloses a flashlight comprising a body for retaining at least one battery (12), said body having serrations on an exterior surface to facilitate desired angular adjustment of said body (serrated portion of 14); a base portion in pivot connection with said body (40), said base portion having a pivot stop to facilitate desired angular adjustment of said body (28); and a lamp attached to said body, and selectively connected to said at least one battery to cause the lamp to emanate light (14); the pivot connection allows a low profile positioning of the lamp with respect to the users line of vision (col.3 lines 40-45); the pivot connection allows for 180 degree angular adjustment of the body and the lamp with respect to the base portion; the body comprises a top portion and a bottom portion the bottom portion having threading (38).

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4. Claims 20-22,24 and 25 are rejected under 35 U.S.C. 102(b) as being anticipated by Maglica (4,577,263).

5. Maglica discloses a body for retaining at least one battery (21) a head assembly for retaining a reflector and a lamp said lamp selectively connected to at least one battery to cause said lamp to emanate light; said reflector moveable relative to said lamp whereby axial movement of said head assembly causes axial movement of said reflector together with said lamp and further axial movement of said head assembly causes axial movement of said reflector relative to said lamp (Abstract, fig 2); the head assembly is moveable relative to a switching assembly and axial movement of said head assembly causes axial movement of said switching assembly together with said reflector (col. 2 lines 25-56); the head assembly includes a bezel and rotation of said bezel causes axial movement of said switching assembly; said head assembly moves axially toward said at least one battery (abstract); further axial movement of said head assembly is toward said at least one battery (abstract)

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Yu.

8. Yu discloses the claimed invention except for the recitation of the base portion being affixable to head gear. It would have been obvious to one of ordinary skill in the

art at the time the invention was made to affix the base portion of Yu to headgear for the purpose of providing a movable lighting device to a headgear to illuminate towards a desired direction (See prior art Dugmore et al)

Allowable Subject Matter

1. Claims 7-11 and 15-19 and 26-30 are allowed.
2. Claim 23 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
3. The following is a statement of reasons for the indication of allowable subject matter: The prior art cited does not teach the following:
 - A flashlight comprising: (a) a body for retaining at least one battery; (b) a head assembly that includes a lamp, said head assembly removably attached to said body, and capable of selectively electrically connecting said lamp to each battery; and (c) a base in pivot connection with said body, said base having a pivot stop to facilitate desired angular adjustment of said light, **wherein said pivot connection is located substantially between at least one battery and the head assembly.**
 - The head assembly includes a bezel and rotation of said bezel causes said reflector to move relative to said lamp.

- A flashlight comprising: (a) a body for retaining at least one battery;(b) a head assembly for retaining a reflector and a lamp; (c) said lamp selectively electrically coupled to said at least one battery to cause the lamp to emanate light; (d) a switching assembly moveable relative to said head assembly; (e) **whereby axial movement of said head assembly causes said switching assembly to move axially and electrically couples said lamp with said at least one battery without said reflector moving relative to said switching assembly and; (f) whereby further axial movement of said head assembly causes said reflector to move relative to said switching assembly.**

Response to Arguments

4. Applicant's arguments filed 09/28/2003 have been fully considered but they are not persuasive.

- With regards to applicant's argument that Yu does not disclose a flashlight body having serrations, examiner disagrees. Bezel 14 as seen in figures 1,2,4a, 4b, and 5 clearly has serrations. Although applicant alleges that there is no teaching in Yu to suggest that the serrations are designed to facilitate desired angular movement this recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a

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manipulative difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963).

- With regards to applicant's argument that Yu does not disclose a pivot stop, pivot 38 is stopped by magnet 42 and keeps the flashlight at a rest position.
- With regards to applicant's argument that Yu does not disclose or suggest that the pivot connection allows for a low profile positioning of the lamp with respect to the users line of vision, the pivot point 28 facilitates that the flashlight be moved to any desired location as allowed by its axis of rotation, furthermore this recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963).
- With regards to applicant's argument that Yu does not disclose or suggest a body with a bottom portion having threading, reference numeral 40, clearly depicting a screw, strongly suggests the existence of threading at the bottom portion of the flashlight body.
- With regards to applicant's argument that Maglica does not disclose or suggest axial movement of the head assembly causes axial movement of the reflector together with the lamp, applicant is directed to column 2, lines 25-50 in the

Maglica reference where axial movement (rotation) of the head assembly causes axial movement of the reflector together with the lamp (downward movement to complete the electrical circuit thus illuminating the lamp), thus providing a "switching assembly". The axial movement as described by applicant is vague with respect to in which direction or axis the movement is taking place.

- Clarification of the Maglica based rejection for claims 24 and 25 is the following: applicant is directed to column 2, lines 25-50 in the Maglica reference where axial movement (rotation) of the head assembly causes axial movement of the reflector together with the lamp (downward movement to complete the electrical circuit thus illuminating the lamp), thus moving the head "assembly" towards at least one battery completing the circuit.

Conclusion

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anabel M Ton whose telephone number is (703) 305-1084. The examiner can normally be reached on 08:00-16:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sandra O'Shea can be reached on (703) 305-4939. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9318.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0956.

Anabel M Ton
Examiner
Art Unit 2875

AMT



Sandra O'Shea
Supervisory Patent Examiner
Technology Center 2800